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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 5230 of 1999

CORAM: HON'BLE SHRI S.R.NAYAK, CHIEF JUSTICE &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

PETITIONER : S.P.Ratnani, S/o Pohumal Ratnani, aged about 60 years, Retired Librarian, Govt. Engineering College, Raipur, Resident of 138, Hanuman Nagar, Kalibadi Chowk, Raipur Tehsil & District-Raipur, (M.P.)

V E R S U S

RESPONDENTS 1. State of Madhya Pradesh, through Principal Secretary, Main Power and Planning Department, Govt. of M. P., Vallabh Bhawan, Bhopal.
2. The Director of Technical Education, M.P., Satpura Bhawan, Bhopal.
3. The Principal, Govt. Engineering College, Raipur.

Present:-

Shri Y.C.Sharma, learned counsel for the petitioner.
Shri Yeshwant Singh Thakur, Govt. Advocate for the State.

ORAL ORDER

(Passed on 12th April, 2006)

The following order of the court was passed by S.R.Nayak, C.J.

The short question that falls for decision-making in this Writ Petition filed under Article-226 of the Constitution of India directed against the order of M.P. State Administrative Tribunal, Bench at Raipur (for short "the Tribunal") in O.A.Number-08/1999 is whether the petitioner is entitled to insist in terms of law that the period between 05-07-1996 and 31-05-1997 during which he was admittedly absent from duty, should be treated as leave with salary or the department was justified in treating that period as leave without salary.

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2. The factual background of this case, in brief, is as follows:-

That the petitioner at the relevant point of time was working as Librarian in the Govt. Engineering College, Raipur. By order dated 11-06-1996, the petitioner was transferred from the said college to Govt. Womens Polytechnic College, Raipur. Against the said posting order, the petitioner made a representation on 15-06-1996 requesting the posting authority to retain him as Librarian at the Govt. Engineering College, Raipur. His request was not accepted by the posting authority. In that view of the matter, the petitioner was relieved from the post of Librarian on 19-06-1996 and he was directed to report at the place. The petitioner did not comply with the said direction. When the matter stood thus, the petitioner retired from the service w.e.f. 31-05-1997 from the post of Librarian at Govt. Engineering College, Raipur after attaining the age of superannuation. It appears that against the rejection of his request to retain him as Librarian at the Govt. Engineering College, Raipur, the petitioner had preferred a further representation to the Govt. and the Govt. vide its order dated 01-06-1998 cancelled the posting order dated 11-06-1996. Although, from the factual matrix led before us which is seen from the order of the Tribunal, it appears that the so-called order made by the Govt. on 01-06-1998 was not brought to the notice of the Tribunal for its consideration, because, we do not find any reference to it in the order. Be that as it may, the document produced by the Petitioner himself marked as Annexure A-8 dated 21-07-1998 addressed to the petitioner by the Deputy Secretary, Department of Man Power & Planning, State of Madhya Pradesh would show that Govt. by its order dated 01-06-1998 directed the department to consider the entitlement of leave of the petitioner in accordance with law.

3. The discretionary power vested in this Court under article-226 of the Constitution of India should be used sparingly and only when this Court is satisfied that the refusal to act under Article-226 would result in injustice to a party who is on right side. A civil servant working under the State who holds a transferable post is liable to be transferred from one place to another or one post to other which is equivalent and he is expected to comply with the transfer order made by the lawful authorities. No Civil Servant has any vested right to insist that he should be kept at a particular place or in a particular post. Who should work where is the prerogative of the State Employer to decide taking into account public interest and exigencies of the service. Here is a case where though the petitioner was relieved from the post of Librarian in Govt. Engineering College, Raipur on 19-06-1996 with a clear direction to report to duty as Librarian at Govt. Women's Polytechnic College, Raipur, he did not obey that order. Even assuming that some irregularity or illegality had crept into the transfer order, that could not justify the State employee to ignore the transfer order made by the lawful authority and absent himself from his duties, not for few days but till he retired on 31-05-1997 after attaining the age of superannuation. In that view of the matter, we are not inclined to exercise the discretionary power vested in this Court under Article-226 of the Constitution of India. Writ petition is, therefore, dismissed. No costs. However, this order shall not come in the way of the petitioner if he is so advised to make a proper representation to the Govt. itself in view of the order of the Govt. dated 01-06-1998.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge